## REMARKS

1. Applicant thanks the Examiner for his helpful comments and suggestions.

2. It should be appreciated that Applicant has elected to amend Claims 1, 6, and 16 solely for the purpose of expediting the patent process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such amendments, Applicant has not and does not in any way narrow the scope of protection to which the Applicant considers the invention herein entitled. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

Hilton Davis / Festo Statement

The amendments to Claims 1, 6, and 16 herein were not made for any reason related to patentability. As for Claims 1, 6, and 16, changes were implemented to clarify the invention. The foregoing amendments are not related to the pending rejections; all amendments were made for reasons other than patentability.

3. Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent no. 6,502,194 (hereinafter Berman) in view of U.S. patent application publication no. 2001/0030660 (hereinafter Zainoulline).

**Claims 1, 6, and 16**

As to Claims 1, 6, and 16, respectfully the Applicant disagrees. Claims 1, 6, and 16 require that the first small portion of the downloaded songs complies with royalty requirements. The Applicant recognized the benefit of pre-buffering while still complying with royalty requirements. This particular claim limitation is not addressed in the current office action. Each and every limitation of a claim must

be considered by the Examiner in the rejection of a claim. MPEP 706.02(j) states that "it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given a fair opportunity to reply." Here, no opportunity to reply is available as no grounds of rejection have been cited by the Examiner for the claim limitation of complying with royalty requirements. Accordingly, the rejection of Claims 1, 6, and 16 and all claims dependents therefrom under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of Zainoulline is deemed to be improper.

**Claims 1, 6, and 16**

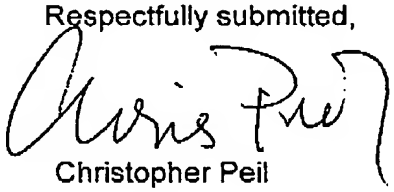
In order to still further distinguish Claims 1, 6, and 16 from the cited art, Applicant amends Claim 1 to clarify that the playtime of said downloaded first small portion is limited to comply with royalty requirements. Claims 6 and 16 are amended to clarify that the first small portion of each of said number of songs downloaded is limited to a playtime not incurring a royalty. The Applicant recognized the financial benefit of limiting playtime of the downloaded portion of a song to a playtime limited by royalty requirements. This allows a user to listen to a small portion of a song and skip to the next song without incurring a royalty. This is particularly advantageous in the current invention where a user is empowered to rapidly skip between songs using a buffer. The invention allows the user to rapidly skip between songs with minimal or no delay. This allows and encourages the user to rapidly and frequently skip to new songs. If the buffered playtime were to exceed royalty requirements, then royalties would be incurred even if the user only listened to a very small amount of each song. In a system that encourages rapid switching between songs without listening to an entire song, it is important that undue royalties are not incurred. Neither Berman nor Zainoulline recognized or taught the importance of pre-loading only a portion of a song complying with royalty requirements. Hence, the Applicants have recognized and implemented a novel cost saving method and apparatus that allows a user to skip one or more songs without having an unintended delay

between skips. Support for the amendments is found at least in the application as filed at page 3, lines 6-9 and page 15, lines 1-5. Accordingly, the rejection of Claims 1, 6, and 16 and all dependents therefrom under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of Zainoulline is deemed to be overcome.

## CONCLUSION

In view of the above, the Application is deemed to be in allowable condition. The Examiner is therefore earnestly requested to withdraw all outstanding rejections, allowing the Application to pass to issue as a United States Patent. Should the Examiner have any questions regarding the application, he is respectfully urged to contact Applicant's attorney at (650) 474-8400.

Respectfully submitted,



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